

Mr. Taylor of Fannin offered the following as a substitute for the joint resolutions.

JOINT RESOLUTION RELATING TO THE ADMISSION OF KANSAS  
INTO THE UNION.

1. *Be it Resolved by the Legislature of the State of Texas,* That we recognize the right of the people of all the Territories, including Kansas, acting through the legally and fairly expressed will of the majority of actual residents, and whenever the number of their inhabitants justifies it, to form a constitution, with or without domestic slavery, and to be admitted into the Union upon terms of equity with the other States.

2 That should Kansas present herself for admission into the Union, having conformed to the provisions of the organic act, organizing said Territory, that it is the duty of Congress to admit Kansas into the Union upon an equal footing with the original States.

On motion of Mr. Wigfall, the resolutions and substitute were referred to the committee on State Affairs ; and

The Senate adjourned until 10 o'clock to-morrow morning.

WEDNESDAY, February 10th, 1858.

The Senate met pursuant to adjournment—prayer by the Chaplain—roll called—quorum present—the Journal of yesterday was read and adopted.

A message was received from the House informing the Senate that the House had passed the following bills originating in the House :

A bill to amend an act to incorporate the Brownsville and Rio Grande Railroad Company, and

A bill to create the county of Blanco, and adjust the boundaries of the counties affected thereby ; and the following bills originating in the Senate :

A bill to incorporate the Opelousas and Texas Western Railroad Company, and

A bill to amend an act to incorporate the Memphis, El Paso and Pacific Railroad Company, and the act supplemental thereto ; and

A Senate bill supplemental to the charter of the Aransas Road Company, with an amendment ; and

A bill to encourage the reclamation of slaves escaping beyond the limits of the slave territories of the United States, and

A bill supplemental to and amendatory of an act to regulate Railroad companies, approved February 7, 1853, and approved December 19, 1857, originating in the House ; and

A Senate bill to legalize surveys in the disputed territory between Milam and Bexar Land Districts, with an amendment.

Mr. Martin made the following report :

The committee on Private Land Claims, have considered a House bill for the relief of Isaac D. Hamilton, and find from the evidence that he was duly enrolled in the service of Texas in 1836, in Captain Shackleford's Company, Col. Fannin's command, and was marched out as a prisoner, after the battle known as Fannin's Defeat, to the notorious massacre, where he was severely wounded, and after much suffering succeeded in making his escape. His wounds are such as disable him from doing anything for himself. Certificates from physicians show that he is unable to do any business in consequence of the wounds there received. The law of December 18th, 1837, (Hart. Dig., Art. 1879,) provides clearly that all those permanently disabled shall receive a league of land, and the committee are of the opinion that of the many cases of this character brought before the Legislature, the one under consideration possesses decided and extraordinary merit, and consequently, instruct me to recommend the passage of the bill.

On motion of Mr. Paschal, the rule was suspended, report and bill taken up, bill read second time and passed to a third reading.

On motion of Mr. Erath, the rule was further suspended, bill read a third time and passed.

Mr. Stockdale made the following reports :

The committee on the Judiciary have considered a House bill to amend the 15th section of an act to organize the District Courts, and define their powers and jurisdictions, approved May 11th, 1846, and instruct me to recommend its passage with the following amendment :

Amend by adding : " Criminal causes shall in no event be tried except by some Judge of the District Court duly commissioned and qualified."

On motion of Mr. Stockdale, the rule was suspended, report

and bill taken up, read, amendment adopted, and bill passed to a third reading.

The committee on the Judiciary have considered a Joint Resolution proposing an amendment to the Constitution, so as to allow appeals, as a matter of right, from the Justice's Courts to the District Courts, and instruct me to recommend that it do not pass. The District Court now has power under the Constitution, to issue all writs necessary to give them a general superintendence over inferior jurisdictions. Under this provision, the Legislature has provided a mode by which any cause in which injustice has been done in the justices Court, can be taken to the District Court for new trial.

The committee on the Judiciary have considered a House bill to exempt ferryboats from execution on forced sale, and as they see no necessity for the exemption, instruct me to recommend that the bill do not pass.

The committee on the Judiciary have considered a Joint Resolution proposing an amendment to the Constitution, (Art. 10, sec. 3,) so as to allow the Legislature to provide a mode for the sale of the lands for School purposes, granted to the counties of this State, and instruct me to recommend the passage of the Joint Resolution with the following amendment:

Amend by striking out the following words viz :

“Or by such tribunals as may secure to their jurisdiction, by consent, of a majority of the legal voters in said counties as.”

The committee on the Judiciary have considered a bill to amend an act defining the office and duties of Sheriffs, passed May 14, 1846, and instruct me to recommend its passage, with the following amendment :

Substitute for section 2—

Sec. 2. If new security is given and approved by the Court, the securities on the old bond shall, thenceforward, not be liable for the official acts of omission or commission of such Sheriff, which are subsequent to the date of the approval of the new bond. The new bond shall relate back to the previous acts of the Sheriff, and the securities upon the new bond shall be responsible for all the acts of such Sheriff from the date of his qualification ; and such bond shall contain a provision to that effect.

On motion of Mr. Herbert, the rule was suspended, report and bill taken up, read, amendment adopted, and bill ordered

to be engrossed ; rule suspended, bill read third time and passed by the following vote :

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Graham, Grimes, Guinn, Herbert, Hyde, Lott, McCulloch, Martin, Maverick, Pedigo, Pirkey, Russell, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Fannin, Throckmorton, Truitt, Whaley and Wigfall—25.

NAYS—Mr. Paschal.

The committee on the Judiciary have considered a bill relinquishing to Catharine R. S. Jones, all the right and time that the State has to the escheated property of David Williams deceased, which proposes to donate the property of said David Williams, deceased, which has escheated to the State amounting to the sum of \$1,433 97 to the said Catharine R. S. Jones and instruct me to report, that David Williams, during his lifetime, frequently declared in the presence of various persons that at his death he wished all his property to vest in the said C. R. S. Jones. That he uttered the same wish and desire, until to within a few days of his death, giving as a reason therefore that she had always been kind to him, had nursed him in his sickness, and as he had no children or near relatives, he wished to remunerate her by making her his legatee. The committee find that Mrs. Jones attempted to establish her claims in the Courts of the country, upon the ground that the said continuous wish and desire of the said David Williams, he being a mariner, amounted to a nuncupative will. But the decision of the Court was adverse to her claims, because the said Williams had failed to use the words, "this is my last will."

The presiding Judge in the Court below, admitted in the strongest terms the equity of her claim, and has filed a written statement, which accompanies her memorial, showing that the failure of her claim resulted alone from the want of the above words. The committee, therefore, instruct me to recommend the passage of the bill.

On motion of Mr. Britton, the rule was suspended, bill read second time and ordered to be engrossed.

Mr. Burroughs made the following report :

The committee on Enrolled Bills, have examined the following bills and report the same correctly enrolled, properly signed and this day presented to the Governor :

A bill to provide for a Geological Survey of the State.

A bill to incorporate the San Antonio Cotton and Woollen Manufacturing Company.

A bill to amend an act to incorporate the Memphis, El Paso and Pacific Railroad Company.

A bill to relinquish the State tax for the years 1858 and 1859, to certain counties therein named.

A bill granting to the persons therein named, the privilege of erecting a Toll Bridge across the Angelina River, and

A bill to authorize the county court of Webb county to levy a special tax.

Mr. Wigfall made the following report :

The committee on State Affairs, have considered a Joint Resolution in response to the Governor's message on Kansas Affairs, together with the substitute offered therefor, and instruct me to report the original Joint Resolutions back to the Senate, and recommend their adoption and passage, with the following amendments :

Strike out "appoint," in line 4, resolution 1st, and insert, "order an election for."

After "Union," in line 11, same resolution, insert as follows: "And advise the Governor of this State that measures have been taken for the appointment of delegates to meet those of Texas."

On motion of Mr. Wigfall, the rule was suspended, Joint Resolutions taken up, read, and the amendments adopted.

The Joint Resolution was then ordered to be engrossed by the following vote

YEAS—Messrs. Britton, Caldwell, Erath, Graham, Guinn, Hyde, Lott, McCulloch, Martin, Maverick, Paschal, Pedigo, Pirkey, Russell, Scarborough, Shepard, Stockdale, Taylor of Fannin, Throckmorton, Truitt, Walker, Whaley and Wigfall—23.

NAYS—Messrs. Burroughs, Fall, Grimes, Herbert and Tankersly—5.

On motion of Mr. Graham, the rules were suspended, Joint Resolutions read third time and passed by the following vote :

YEAS—Messrs. Britton, Caldwell, Erath, Graham, Guinn, Hyde, Lott, McCulloch, Martin, Maverick, Paschal, Pedigo, Pirkey, Russell, Scarborough, Shepard, Stockdale, Taylor of Fannin, Throckmorton, Truitt, Walker, Whaley and Wigfall—23.

NAYS—Messrs. Burroughs, Fall, Grimes, Herbert and Tankersly—5.

Mr. Herbert introduced a bill to incorporate the Columbus, San Antonio and Rio Grande Railroad Company; read first time.

On motion of Mr. Herbert, the rule was suspended and bill read second time.

On motion of Mr. Paschal, the bill was amended by adding, "provided the stock shall not be sold at less than par value."

The bill was then ordered to be engrossed.

On motion of Mr. Paschal, the rule was further suspended, bill read third and passed by the following vote :

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Graham, Grimes, Guinn, Herbert, Lott, McCulloch, Martin, Paschal, Pedigo, Pirkey, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Fannin, Throckmorton, Truitt, Walker, Whaley and Wigfall—24.

NAYS—Mr. Russell—1.

On motion of Mr. Paschal, a House bill to amend an act to incorporate the Brownsville and Rio Grande Railroad Company, was taken up and read first time.

On motion of Mr. Scarborough, the rule was suspended, bill read second time, and passed to a third reading ; rule further suspended, bill read third time and passed by the following vote :

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Graham, Grimes, Herbert, Hyde, Lott, McCulloch, Martin, Maverick, Paschal, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Fannin, Throckmorton, Truitt, Whaley and Wigfall—23.

NAYS—Messrs. Pirkey and Russell—2.

Mr. Stockdale introduced a bill quieting the title to the lands appropriated by the Republic of Texas for the seat of Government ; read first and second times and referred to the committee on the Judiciary.

Mr. Taylor of Fannin, introduced a bill to locate the State University, and

Mr. Caldwell introduced a bill to locate the University of Texas, which were read first and second times and referred to the committee on State Affairs.

By leave, Mr. Graham made the following minority report :  
TO THE HON. F. R. LUBBOCK,

*President of the Senate :*

The undersigned, minority of the committee on the Judiciary, to whom was referred a bill to be entitled an Act "to

relinquish to the Texas Central Railroad Company a certain bond therein named," dissents from the views expressed in the report of the majority, and submits the following as his reasons therefor :

It is an admitted fact that the conditions of the bond entered into by the above named Company on the 27th January, A. D. 1857, have not been performed. The report of the majority states that "*the fact of the forfeiture has not been ascertained* by a judicial sentence, though your committee are fully convinced, the Company failed to comply with the conditions of the law under which the bond was given, and that the same might be declared by judicial sentence." The majority further say : "The bill now under consideration, is liable to the same objections urged by the Governor in the latter part of his message of the 23d ult., refusing his approval of an act for the relief of the Houston and Texas Central Railroad Company."

The proposition maintained by the Governor, that "a forfeiture or penalty once incurred in a case like the present, cannot be remitted by the Legislature, but becomes the subject of Executive clemency," is not at all shaken by the argument in the report of the majority.

The second article of the Constitution declares "that the powers of the Government of the State of Texas shall be divided into three *distinct* departments, and each of them be *confided* to a separate body of Magistracy, to-wit : Those which are Legislative to one, those which are Executive to another, and those which are Judicial to another ; and no person or collection of persons being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

Now, if it can be shown that the power to remit the forfeiture in question has been "*confided*" to the Executive department and properly attached to that department, it follows that it is expressly excluded from the Legislature.

The Constitution makes a specific division of the powers of the Government between the three departments, and in the 5th article enumerates those confided to the Executive department. The 11th section of that article declares : "In all criminal cases except those of treason and impeachment, he (the Governor) *shall have power* after conviction to grant reprieves and pardons ; and under such rules as the Legislature may prescribe, he shall have power to remit fines and *forfeitures*."

Thus it is seen that the power to remit *forfeitures* is conferred upon the Governor, but it is the duty of the Legislature to prescribe the rules for its exercise. It is expressly enumerated amongst the powers *confided* to the Executive, and is, therefore, expressly excluded from the Legislature by the 2d article of the Constitution.

The power not only "properly attaches," in the language of the majority report, to the Executive department, but it has been expressly confided to that department, and positively denied to the other departments.

It may be true, as stated by the majority, "that many of the powers of the Government are exercised by persons being of the Legislative, Judicial or Executive departments indifferently, as the Legislature may prescribe." But it is not true in reference to any of the powers expressly enumerated in the Constitution, and expressly confided to one of the departments, and cannot be done without violating that instrument.

The majority in their report make an admission which seems to the undersigned to be fatal to the conclusions to which they have arrived. They say "that it may be said that the power expressly conferred upon the Governor by the Constitution, is necessarily withheld from the Legislature."

Had the power to grant pardons and to remit fines and forfeitures been *vested* in the Governor as the Supreme Executive power is vested in him, as the legislative powers are *vested* in two distinct branches, and as the judicial power is *vested* in the courts, no one could doubt that this would exclude the Legislature from the exercise of the same power. The Constitution expressly *confides* the power to grant pardons and remit fines and forfeitures to the Governor,—in a word *vests* the power in him, and does not leave the exclusion of the same power from the Legislature to implication—but expressly declares that "no person or collection of persons being of one of those departments, shall exercise any power properly attached to either of the others, except in instances herein expressly permitted."

The undersigned does not conceive that it is at all material to the argument whether the term *vested*, *confided* to, or attached to, is used. If either term is used the power being conferred upon one department, it is excluded from the others. The majority report, however, seems to lay peculiar stress upon the word *vested*, as used in the Constitution, in conferring the powers of the government upon the several departments—one



indeed to which it is not entitled. The legislative or law making power is vested in the Legislature. This includes the power to make all laws whatever, subject to the limitations imposed by the Constitution. It was not necessary to define and prescribe specifically the subjects of legislative power. Indeed it could not have been done. It is otherwise in regard to the other departments. The judicial power of the State is vested in one Supreme Court, in the District Courts, and in such inferior courts as the Legislature may from time to time ordain and establish; and such jurisdiction may be vested in corporation courts as may be deemed necessary, and be directed by the law. Yet the Constitution prescribes the specific jurisdiction of the several courts created by it, and declares the subjects to which the jurisdiction of the "inferior tribunals," &c., shall extend.

Is not the power to issue "the writs of *habeas corpus*, *mandamus*, &c., as fully vested in the Supreme Court as the judicial power of the State is vested in the several courts enumerated? and so in regard to the special subjects of jurisdiction conferred upon other courts.

The Supreme Executive power of the State is vested in the Governor. In what does that power consist? It consists of those powers alone expressly enumerated in the Constitution, or conferred by laws made in pursuance of that instrument. To command the army and navy of the State and of the militia, &c., to require information in writing from the Executive department, to convene the Legislature on extraordinary occasions—to adjourn the two houses in case of disagreement—to give the Legislature information in writing—to take care that the laws shall be faithfully executed, and in criminal cases to grant reprieves and pardons after conviction, and to remit fines and forfeitures, are enumerated amongst the ingredients which constitute the Supreme Executive power of the State. If the power to remit fines and forfeitures is not *vested* in the Governor as a part of the Supreme Executive power of the State, then the power to see that the laws be faithfully executed—to command the army and navy of the State—convene the Legislature upon extraordinary occasions—as well as all the other enumerated powers, is not so vested, and the Legislature has as much authority to exercise any other of those specified, as to remit a forfeiture. These "powers are confided to" and are "properly attached" to the Executive department, and are, therefore, excluded from the other departments.

The undersigned admits the proposition laid down by the majority of the committee, that "because the pardoning power and the power to remit fines and forfeitures is conferred upon the Governor, it does not follow that the Legislature may not repeal every criminal law in the land, throw open every prison door, and bid every prisoner go free, and release every fine, forfeiture and bond due the State." To repeal, as well as to make laws, belongs to the Legislative power of the State, and while it is conceded that the Legislature may set every prisoner in the State free by repealing the law under which he is charged, it is denied that it has the power to reprieve or pardon a single offender while the law remains in force. They may cancel bonds, remit fines and forfeitures, by repealing the laws under which they were executed or accrued, but cannot remit a single fine or forfeiture while the law remains in force. It is within the power of the Legislature to repeal the "act to encourage the construction of Railroads in Texas by donations of lands," and were the same to be done, the penalty of the bond executed under said law by the Houston and Texas Central Railroad Company would be discharged. But to repeal a law, and to grant a pardon or remit a fine or forfeiture, is the exercise of widely different powers.

In criminal cases, the pardoning power of the Governor extends only to cases *after* conviction ; but it does not, therefore, follow that the Legislature may grant pardons *before* conviction. According to the legitimate rules of construction, the Constitution, by conferring the power to pardon upon the Governor, has excluded it from the Legislature, and by declaring that he shall only pardon in cases *after* conviction, prohibits it from being done *before*. The power to pardon before conviction does not exist in any of the departments of the Government, because the people, in whom the political power of the State is inherent, have seen fit to exclude it from them.

The establishment of religious tests as a qualification for office ; restraints upon the rights of conscience in regard to religious worship ; abridgments or restraints upon the liberty of speech and the press, as well as a violation of all the other rights and privileges enumerated in the Bill of Rights, belong to the powers of sovereignty, but none of those powers can be exercised by any or all of the departments of the Government combined. They do not exist, because they are wisely pro-

hibited by the Constitution, and so the power to pardon before conviction does not exist, because it is prohibited.

But be the case as it may in regard to the power to grant reprieves and pardons in criminal cases, before conviction, the case is different in regard to the power to remit fines and forfeitures. In the last case, the Constitution does not limit the power to cases after conviction. The power to remit fines and forfeitures, in ALL CASES, is conferred upon the Executive, but to be exercised under such rules as the Legislature shall prescribe.

That the power to remit is dependent upon the rules to be prescribed by the Legislature, cannot be admitted. The power is absolutely conferred upon the Executive, and the duty is absolutely imposed upon the Legislature to prescribe the rules for its exercise. Had the Legislature disregarded this constitutional mandate, and failed to prescribe the rules, at the most, the power would have remained dormant, to be revived whenever the Legislature should prescribe the rules for its exercise. The Legislature, by failing to perform their duty, could not deprive the Executive of his constitutional prerogative and usurp it themselves, and by prescribing the rules for the exercise of the power in cases *after* conviction, they did not, therefore, appropriate to themselves the power to remit fines and forfeitures. It is also clear that the Legislature, in prescribing these rules, have no right to divide the power with the Executive Department, and make its exercise dependent upon their recommendation. As well might they claim to divide the power with the Supreme Court to grant writs of mandamus, and to limit them to such cases as they may recommend by joint resolution, because the Constitution makes it their duty to prescribe by law the regulations under which such writs may be issued.

Whether this power has been wisely reposed by the Constitution in the Governor, it is not necessary to discuss—that was a question for the framers of the Constitution to determine. The facts stated in the majority report, therefore, for the purpose of showing the impolicy of intrusting this power to the Executive, might be used as an argument in favor of a change of the Constitution, but certainly do not authorise the violation of that instrument by an act of usurpation on the part of the Legislature.

The vast interests referred to by the majority have grown up under the Constitution since its adoption, and are subject to

its provisions. They were not contemplated by the framers of that instrument, and therefore afford no facts upon which to base a rule of construction. Had they existed at the time, and the argument of the majority report been submitted to the Convention, a provision adapted to the case might have been made, but having grown up under that instrument, they must be subject to its provisions.

But the undersigned is at a loss to determine how the numerous private and public corporations spoken of by the majority, are to suffer such serious detriment from the exclusive exercise by the Executive, of the power to remit fines and forfeitures. A franchise forfeited by a corporation, it is true, can only be remitted by the Executive, under the rules prescribed by the Legislature, but it is not denied that the Legislature has the right to re-invest a franchise in the corporation similar in all respects to the one forfeited. Nor is it denied, that if the penalty of the bond executed by the Houston and Texas Central Railroad Company were recovered, that the Legislature would have the right to donate the same or a similar amount back to the Company, but the passage of a law for such a purpose would be subject to all the rules imposed upon the Legislature in making pure donations.

It is insisted by the majority, that the power of the Governor to remit fines and forfeitures extends only to criminal cases. While we deny the correctness of this position, it is not necessary to controvert it by argument. As to the nature of the forfeiture incurred by the Houston and Texas Central Railroad Company, the undersigned quotes the following language from the case of the State of Maryland *vs.* Baltimore and Ohio Railroad Company, 3d Howard, page 532 : “ Yet although this supplementary charter was a contract, in this sense of the term, it does not by any means follow that the Legislature might not, in the charter, impose duties and obligations upon the Company, and inflict penalties and forfeitures as a *punishment* for its disobedience, which might be enforced against it in the form of *criminal* proceedings, and as a *punishment* of an *offence* against the law. And a provision, as in this case, that the party shall forfeit a particular sum in case he does not perform an act required by law, has always, in the construction of statutes, been regarded, not as a contract with a delinquent party, but as a punishment for an offence. Undoubtedly, in the case of individuals the word *forfeit* is construed to be the language of contract, because contract is the only mode in

which one person can become liable to pay a penalty to another for a breach of duty or the failure to perform an obligation. In legislative proceedings, however, the construction is otherwise, and a forfeiture is always to be regarded as a punishment inflicted for a violation of law." Under this authority, the forfeiture in this case must be regarded as a punishment inflicted upon the Railroad Company for a criminal, or *quasi* criminal offence, for the violation of a duty enjoined by law, and even under the construction of the majority, who declare that the clause of the Constitution which gives the power to the Executive to remit fines and forfeitures, was intended only to apply to criminal cases, the bill under consideration comes within the meaning of the Constitution, and therefore to remit the penalty of the bond belongs to the Executive power.

The majority insist that the penalty of the bond and the forfeiture of lands under the act, by virtue of which the bond was given, is not of the character of fines and forfeitures mentioned in the 11th section of the 5th article of the Constitution. The language employed in the Constitution does not justify that conclusion. The power is given to the Governor to remit fines and forfeitures, under such rules as the Legislature may prescribe. The power is not limited to one species of fine or forfeiture, to the exclusion of others, but, according to the plain and literal import of the language employed, includes every possible fine or forfeiture to which the State is a party, known to our laws. The Constitution makes no discrimination, and it is not for the Legislature to make it. The Constitution imposes no limit to the cases to which the power shall be applied, and therefore the Legislature cannot do it, except by refusing to prescribe the rules under which the power is to be exercised, and, in that event, the power would not rest with the Legislature, but remain dormant with the Executive.

The power of the Legislature to remit penalties, fines and forfeitures, and to discharge criminals, by repealing the laws under which the fines and forfeitures were incurred, or the crimes were committed, has been fully admitted, but this is done in the exercise of the law making power. But, as already stated, the power to remit a fine, forfeiture or penalty, or pardon criminals, without touching the law under which the penalty was incurred or offence committed, is entirely different.

The case of the State of Maryland vs. Baltimore and Ohio Railroad Company, 3d Howard's Report, 534, so far from sustaining the position of the majority, is an argument against

it. In that case, the section of the general law under which the forfeiture accrued was expressly repealed, and, without a saving clause, the penalty or forfeiture would have gone with the repeal without the express declaration that it was remitted and released. The Chief Justice, in delivering the opinion of the court, put the case upon these grounds: "The whole scope of law shows that it was legislating for State purposes, making large appropriations for improvements in different places; and if the policy which at that time induced it to prescribe a particular course for the road, and, in case it was not followed, to exact from the Company one million of dollars, and devote it to the use of Washington county, was afterwards discovered to be a mistaken one, and likely to prove highly injurious to the rest of the State, it had unquestionably the power to change its policy, and allow the Company to pursue a different course, and to release it from the obligation, both as to the direction of the road and the payment of the money. For in doing this it was dealing altogether with matters of public concern, and interfered with no private right."

The Legislature of Maryland did not pretend to remit the penalty, leaving the 5th section of the act in force, which required the company to run their road through certain towns.

It is not pretended that the act under consideration indicates a change of the policy on the part of the State as indicated in the act, to encourage the construction of Railroads. It in effect re-affirms that policy. It does not pretend to repeal those portions of that law under which the bond was executed and the forfeiture was incurred—it is simply an attempt on the part of the Legislature to exempt a party from the penalties of the law, leaving the law untouched—and so far is, in the opinion of the undersigned, trenching upon the constitutional powers of the Executive.

The question, whether under the Constitution of the State of Maryland, the power to remit forfeitures belonged to the Legislature or Governor of that State, did not arise in the case—was not made in the argument—and if it had, it could not have been decided by the Supreme Court of the United States for want of jurisdiction, it not being a question to which the judicial power of the United States extends under the judiciary act of 1789. The question presented and decided was, whether the law repealing the section which required the road to be located so as to run through particular towns, and in default of compliance, imposed a forfeiture of \$1,000,000 to the

State for the use of Washington county, and remitting the forfeiture was in violation of the clause of the Constitution of the United States, which declares that no law shall be passed impairing the obligation of a contract.

In addition to this, it is quite impossible that in making the decision referred to in 3d Howard, that the Supreme Court could have had any reference to the clause of the Constitution of Maryland quoted in the report of the majority, and alleged to be similar to our own. The clause quoted was never inserted in the Constitution of Maryland until ———, 1851. The decision referred to was made at the January Term of the Supreme Court, A. D. 1845, about six years before the provision of the Constitution was in existence which it is said to construe.

The case of the United States vs. Morris, 10th Wheaton's Reports, cited by the majority, does not touch the question. The question in that case was as to the power of the Secretary of the Treasury to remit a forfeiture or penalty accruing under the revenue laws, so as to affect the shares of the forfeiture or penalty to which the officers of the customs were entitled, as well as the interests of the United States. The power to remit the penalty was expressly conferred upon the Secretary of the Treasury by law. The general power was admitted but was only questioned so far as it was exercised to the prejudice of the revenue officers.

The Constitution of the United States, Article 2d, Section 2, gives the power to the President "to grant reprieves and pardons for offences against the United States, except in cases of impeachment, but does not, by express grant, confer upon him the power to remit fines and forfeitures. It is left to Congress to prescribe the mode for the exercise of that power, and the person or officer who shall exercise it. Had Congress assumed to exercise one of the powers expressly granted to the President, to grant a pardon for instance, or to confer the authority on the Secretary of Treasury, then the question involved in the bill under consideration would have been presented.

So far as the policy or the propriety of relieving the Houston and Texas Central Railroad Company from the penalty of the Bond is concerned, the undersigned deems it unnecessary to speak, as he has already shown a willingness to relieve the

Company by supporting a measure authorizing the Governor to remit the forfeiture.

M. D. GRAHAM,

Minority of Committee on Judiciary.

I concur in the foregoing report.

PIRKEY,

One of same Committee.

Mr. Martin moved that one hundred and fifty copies of the majority and minority report each, be printed for the use of the Senate—lost by the following vote :

YEAS—Messrs. Burroughs, Graham, Lott, McCulloch, Martin, Pirkey and Scarborough—7.

NAYS—Messrs. Britton, Caldwell, Erath, Fall, Grimes, Guinn, Herbert, Hyde, Maverick, Paschal, Russell, Shepard, Stockdale, Tankersly, Taylor of Fannin, Throckmorton, Truitt, Whaley and Wigfall—19.

On motion of Mr. Scarborough, the Senate adjourned until 7 o'clock, P. M.

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7 O'CLOCK, P. M.

The Senate met—roll called—there being no quorum, it adjourned until to-morrow morning at 10 o'clock, A. M.

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THURSDAY, February 11, 1858.

The Senate met pursuant to adjournment—prayer by the Chaplain—roll called—quorum present.

The Journal of yesterday was read and adopted.

A message was received from the House, informing the Senate that the House had concurred in the amendments of the Senate to the following bills originating in the House :

A bill for the relief of the heirs of John B. Fox ;

A bill to authorize the county court of Gonzales county to levy a special tax ;

A bill to purchase a site for the permanent location of the institution for the education of the blind ;

A bill supplemental to an act to fix the time of holding courts in the 14th Judicial District ;

A bill to amend an act to create the 15th Judicial District, and provide for the election of a Judge, &c., approved January 21st, 1856 ;